

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012051019

ORDER DETERMINING DUE
PROCESS COMPLAINT IS
SUFFICIENT; ORDER GRANTING
MOTION TO DISMISS ISSUE FOUR
OF STUDENT'S COMPLAINT

This matter has a somewhat convoluted history. Since that history impacts on the decision of the undersigned Administrative Law Judge finding the instant request for due process (complaint)¹ to be sufficient, it is important to briefly discuss the events leading to the filing of this complaint.

On March 15, 2012, Student filed a complaint with the Office of Administrative Hearings (OAH) in case number 2012030702 (first case) naming the District. On March 26, 2012, OAH issued an order granting the District's notice of insufficiency (NOI) as to the first case, and granting Student leave to amend. Student timely filed an amended complaint on April 5, 2012. On April 12, 2012, the District filed an NOI as to Student's amended complaint and a motion to dismiss as to issue four in the complaint. On April 13, 2012, OAH issued an order denying the NOI and granting the District's motion to dismiss issue four, as to the first case.

OAH held a telephonic prehearing conference in the first case on May 16, 2012. The issues for the due process hearing were determined based upon OAH's April 13, 2012 finding that Student's amended complaint was sufficient. Hearing in the matter was scheduled to begin on May 22, 2012.

On May 18, 2012, Student filed a motion for continuance in the first case. OAH denied the motion on May 21, 2012. On May 22, 2012, at the start of the hearing in the first case, Student withdrew his case.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

Student filed his complaint in OAH Case No. 2012051019 (referred to herein as the second case or the instant case) on May 22, 2012, the same day he withdrew the first case. Rather than refiling his amended complaint from the first case, Student appears to have re-filed his original complaint, with the exception of a few words in each of his issues referencing the March 2012 complaint (first case) as the date to measure the two-year statute of limitations. The complaint in the instant case does not contain the language in Student's amended complaint which stated that "each and every issue alleged herein is alleged as a denial of FAPE [free appropriate public education], the sole purpose for the filing of a due process complaint pursuant to C.E.C. [California Education Code] § 56500 et seq." It was this language, viewed in conjunction with the factual details Student presented in the amended complaint in the first case, which prompted OAH to find that Student's amended complaint in the first case was sufficiently plead.

On June 1, 2012, the District timely filed an NOI as to the complaint in the instant case, along with a motion to dismiss Student's Issue Four. This Order addresses both the NOI and the motion to dismiss. As discussed below, the NOI is denied and the motion to dismiss is granted.

NOI

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint in the instant case alleges three claims, which basically mirror the claims raised in both the original complaint and the amended complaint in the first case.

Student again alleges in issue one of the instant case that the District failed to provide educational records to his parent. Although Student fails to state facts that identify whether this procedural violation resulted in a substantive impact for him or his parent, it is clear from the issue as framed in the second case as well as the pleading history of the prior case, that Student contends the District failed to provide his parent with a copy of his 2010 individualized educational program (IEP), the service logs for behavior/IBI services, and any emails generated or received by the District regarding Student. Issue one provides the District with sufficient information to participate in resolution sessions and mediation, and to prepare for hearing.

With respect to issue two, Student alleges that for the two years prior to March 2012, the District has failed to fully and appropriately assess Student in all areas of suspected disability. As with his previous complaints, the instant complaint states extensive factual history dating back to 2001. Within the statute of limitations, it mentions assessments of Student’s cognition and academics, and a speech and language assessment the District conducted in 2012. Student’s claims in issue two are therefore limited to the issue of whether the District failed to appropriately assess Student’s unique educational needs in the areas of cognition, academics and speech and language. Although Student makes his allegation with regard to the two years “prior to the filing of the March 2012 complaint,” the statute of limitations in the second case covers the two years prior to its filing; there is no

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

relation-back doctrine applicable to a case that was withdrawn and subsequently refilled. Therefore, the allegations in issue two of the second case can only refer to the two years prior to the filing of the second case on May 22, 2012. Based upon the pleadings and orders in the prior case, the District is well aware of the issues to be litigated in issue two of the instant case. As limited, both by the issues described above, as well as by the time period as defined from the date of the filing of the instant case, the claims in issue two of the instant case are sufficiently plead to provide the District with enough information to participate in a resolution session and in a mediation, and to prepare for hearing. If Student intended to include other areas of need in issue two, Student must file a motion to amend along with an amended complaint that clearly lays out any other claims he wishes to make.

With respect to issue three of the instant case, Student generally alleges that the District has failed to provide him with a FAPE over the two years prior to March 2012. Student alleges that the District failed to “fully assess and identify Student’s unique educational needs,” that he remains far behind his peers, and lacks “skills, including social skills” to allow him to function at or near grade level. The second complaint mentions a recent assessment recommending a structured learning environment addressing needs in the areas of pragmatics and social skills. As discussed above with regard to issue two of the second case, issue three is limited to the two years prior to May 22, 2012. Issue three is also limited to the claim that the District denied Student a FAPE by failing to assess and identify Student’s unique educational needs in the area of pragmatics and social skills. As limited, the claim is sufficiently plead to provide the District with enough information to participate in a resolution session and in mediation, and to prepare for hearing. If Student intended to include other areas of need in issue three, Student may file a motion to amend the instant complaint.

Motion to Dismiss

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code. Issue Four in Student's complaint alleges that District denied Student and parent their rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and state civil rights laws. Therefore Student's issue four is dismissed.

ORDER

1. Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii). The District's NOI is denied.
2. Unless Student successfully moves to amend his complaint, the issues for hearing in the instant case are limited to the following:
 - I. Whether District denied Student a FAPE between May 22, 2010 and May 22, 2012, by failing to provide Student's records to his parent, specifically:
 - a. The 2010 IEP;
 - b. Service Logs for behavior/IBI Services (May 22, 2010- May 22, 2012);
and
 - c. Email generated or received by the District concerning Student?
 - II. Whether the District denied Student a FAPE from May 22, 2010, to May 22, 2012, by failing to fully and appropriately assess Student in all areas of suspected disability, specifically in the areas of cognition, academics and speech and language?
 - III. Whether the District denied Student a FAPE from May 22, 2010, to May 22, 2012, by failing to fully assess and identify his unique educational needs in the areas of pragmatics and social skills?
3. The District's motion to dismiss issue four of the instant complaint is granted.
4. All dates shall remain as calendared unless otherwise ordered.

Dated: June 5, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings